



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

June 18, 1991

Ms. Mary Ann Courter
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR91-298

Dear Ms. Courter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12399.

We have considered the exceptions you claimed, specifically sections 3(a)(1) and 3(a)(8), and have reviewed the the copies of the documents forwarded to us. The documents consist of material sealed by court order, an intra-agency memorandum and a closed investigative report.

We turn first to the material sealed by court order. You assert that section 3(a)(1) of the Open Records Act excepts this material from disclosure. We agree. Section 3(a)(1) excepts from required public disclosure information deemed confidential by statutory law. Subsection 2(g) of section 18.21 of the Code of Criminal Procedure provides that the contents of an application and order for the installation and utilization of pen registers or traps and trace devices may be disclosed only in the course of a judicial proceeding. An unauthorized disclosure is punishable as contempt of court. *Id.* Thus, you may not disclose the applications and orders forwarded to us for our review.

We turn next to the intra-agency memorandum. You state that your agency may withhold this memorandum pursuant to section 3(a)(8), the law enforcement exception. Section 3(a)(8) excepts from required public disclosure

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution;

The test for section 3(a)(8) is whether release of the requested information will "unduly interfere with law enforcement and crime prevention." *See Ex Parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The contents of this memorandum indicate the circumstances in which your agency considered it necessary for law enforcement reasons to request the installation of pen registers or other trace devices. Since disclosure of the circumstances in which your agency deems it necessary to obtain registers and devices could assist individuals to avoid detection by law enforcement personnel in the future, you may withhold the memorandum from disclosure.

You also seek to withhold from disclosure pursuant to section 3(a)(8) certain portions of a closed investigative report. Those portions are paragraphs 18, 19, 20, 22, 28, 29, 39 and 56 of the report. In OR91-071 dated February 1, 1991, this office held that those paragraphs could be withheld from disclosure pursuant to section 3(a)(3) of the Open Records Act. You no longer assert that section 3(a)(3) applies to except these paragraphs from disclosure and rely only on section 3(a)(8).

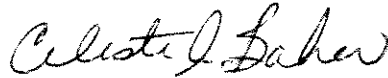
In a letter dated December 17, 1990 that you submitted with regard to OR91-071, you stated that the paragraphs mentioned above were excepted pursuant to section 3(a)(8) because they referred to police investigative techniques whose disclosure would allow persons suspected of crime to alter their actions to avoid detection. You reasserted that argument in your letter dated June 6, 1991.

The test under section 3(a)(8) with regard to closed investigative reports is the test quoted above from *Ex Parte Pruitt*. *See* Open Records Decision Nos. 252 (1980), 216 (1978). Since you have not demonstrated that disclosure of the contents of the paragraphs in issue here would reveal any law enforcement procedures and techniques not commonly known, we cannot determine how disclosure of the contents would unduly interfere with future law enforcement or crime prevention. Open Records Decision No. 252, at 3. Accordingly, you must disclose such contents.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR91-298.

Yours very truly,

A handwritten signature in cursive script, reading "Celeste A. Baker".

Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/lb

Ref.: ID# 12399

Enclosures: documents; Open Records Decision Nos. 252, 216

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